

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VICKI WEST,

Plaintiff,

No. CIV S-04-0438 WBS GGH

vs.

CIRCLE K STORES, INC.,

Defendant.

ORDER

Presently before the court is defendant's motion for protective order, filed March 4, 2005. Having reviewed the parties' joint statement, filed April 6, 2005, the court now issues the following order.¹

PROPOSED PROTECTIVE ORDER

The district court denied the parties' prior request for a protective order on November 15, 2004. Defendant has renewed its motion and the parties have agreed on the language of the proposed protective order.

Although the parties to a civil litigation generally have the right to protect information from public disclosure that has been produced to the other party only because of

¹ The motion was originally noticed for hearing on April 14, 2005, but was vacated after the court determined a hearing was unnecessary.

1 discovery, Seattle Times v. Rhinehart, 467 U.S. 20, 104 S. Ct. 2199 (1984), that right extends
 2 only in the context of pretrial discovery itself. Id. at 33 and 37, 104 S. Ct. at 2207 and 2209.
 3 Once the information is tendered to the court in an adjudicatory context, there is a presumption
 4 that the federal courts, including filings in the court, are open to public access. San Jose Mercury
 5 News v. U.S.D.C. (N.D.Cal.), 187 F.3d 1096, 1102 (9th Cir. 1999); Equal Employment
 6 Opportunity Commission v. Nat. Children's Center, 98 F.3d 1406, 1408 (D.C. Cir. 1996).

7 Protective orders safeguard the parties and other persons in light of the otherwise
 8 broad reach of discovery. United States v. CBS, Inc., 666 F.2d 364, 368-69 (9th Cir. 1982). The
 9 court has great discretion to issue protective orders if discovery causes annoyance,
 10 embarrassment, oppression, undue burden, or expense. B.R.S. Land Investors v. United States,
 11 596 F.2d 353, 356 (9th Cir. 1979). Good cause, however, is required to obtain a protective order.
 12 Fed. R. Civ. P. 26(c); Foltz v State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir.
 13 2003); Phillips v. General Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) ("Generally, the
 14 public can gain access to litigation documents and information produced during discovery unless
 15 the party opposing disclosure shows 'good cause' why a protective order is necessary").

16 "Good cause" to bar the public from litigation documents must be more than
 17 mere desire. The party seeking protection must show specific prejudice or harm, including, with
 18 respect to individual documents, particular and specific need. Id.; San Jose Mercury News, Inc.,
 19 187 F.3d at 1102; W.W. Schwarzer, A.W. Tashima & J. Wagstaffe, Federal Civil Procedure
 20 Before Trial § 11:88. "If a court finds particularized harm will result from disclosure of
 21 information to the public, then it balances the public and private interests to decide whether a
 22 protective order is necessary." Phillips, 307 F.3d at 1211 (citing Glenmade Trust Co. v.
 23 Thompson, 56 F.3d 476, 483 (3d Cir.1995) (factors)).

24 As a preliminary matter, the court has concern about excessive filings designated
 25 "confidential" or "highly confidential." "Good cause" to bar the public from information utilized
 26 in an adjudicatory session must be more than merely the parties' desire for such a bar. Moreover,

1 the court has had the unfortunate experience on numerous occasions of having to undo protective
2 orders where the parties designate so much confidential material that the entire case filings are
3 submitted under seal. Furthermore, since the implementation of electronic filing procedures in
4 this court in January, 2005, the burden on the court to maintain documents filed under seal is
5 greater than ever, resulting in a variety of logistical problems. The protective order as submitted
6 by the parties has the potential to offend the observations set forth herein. Thus, the undersigned
7 will not approve a protective order containing blanket authority for the parties to decide what
8 shall be kept under seal.

9 Accordingly, the court will direct the parties in their filing procedure as follows.
10 If a motion or other filing is to be adjudicated by the District Judge, the parties shall provide a
11 stipulation or application with respect to the material to be filed under seal, including the good
12 cause for sealing, to the District Judge. The parties are free to create their own procedure for
13 such stipulations/applications.

14 If the motion is to be heard by the undersigned:

15 Filing Under Seal In Matters Pending Before the Honorable Gregory G. Hollows:

- 16 • When the party who has designated information as confidential wishes to file it
17 under seal:

18 Ten days prior to the planned filing, the party shall file with the
19 undersigned an ex parte application along with a proposed order,
20 served on the opposing party, seeking approval of each specific
21 filing or part thereof proposed to be made under seal. The court
22 shall attempt to rule expeditiously on the application. *In no event,*
23 *however, will the court's failure to rule upon the application prior*
24 *to the scheduled filing date serve as a basis to continue the filing*
25 *date.* If the court does not communicate its ruling on the
26 application prior to the filing date, the confidential information
shall be filed under seal. If the submitting party does not timely
file the application, the information shall be filed in the public
record.

- 24 • When a party wishes to file confidential information designated as such by the
25 opposing party:

26 Ten days prior to the planned filing, the party shall contact the
opposing party and ask permission not to file under seal such

1 confidential information. Permission, or the lack thereof, as to
2 specific confidential information shall be memorialized by the
3 submitting party. In the event that the opposing party fails to give
4 permission for the unsealed filing, in whole or in part, the opposing
5 party shall file an ex parte application with the undersigned, served
6 on the submitting party, seeking approval for each specific filing or
7 part thereof proposed to be made under seal. The opposing party's
8 application shall be made no later than five days prior to the
9 submitting party's planned filing date. The court shall attempt to
10 rule expeditiously on the application. *In no event, however, will*
11 *the court's failure to rule upon the application prior to the*
12 *scheduled filing date serve as a basis to continue the filing date.* If
13 the court does not communicate its ruling on the application prior
14 to the filing date, the confidential information shall be filed under
15 seal. If the opposing party does not timely file the required
16 application, the information shall be filed in the public record.

17 Accordingly, IT IS ORDERED that defendant's motion for protective order, filed
18 March 4, 2005, is GRANTED, except as to paragraph 5 which has been superseded by this order.
19 All paragraphs of the submitted proposed protective order except for paragraph 5 are now in
20 effect. Nothing in this order shall preclude another court from ordering production of
21 confidential material.

22 DATED: 4/22/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWES
U. S. MAGISTRATE JUDGE

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